

AO 91 (Rev. 08/09) Criminal Complaint

U.S. DISTRICT COURT - N.D. OF N.Y.
FILED
NOV 17 2011
AT ____ O'CLOCK
Lawrence K. Baerman, Clerk - Binghamton

UNITED STATES DISTRICT COURT
for the
NORTHERN District of NEW YORK

United States of America

v.

Case No. 3:11-MJ-488 DEP

WAYNE HAMILTON

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of January, 2007 through November, 2011 in the county of BROOME
in the NORTHERN District of NEW YORK, the defendant(s) violated:

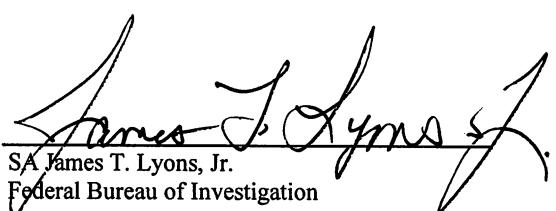
Code Section

Description

Title 18, USC, Sections 2252A(a)(2) and 2252A(a)(5)(B) Receipt and Possession of Child Pornography

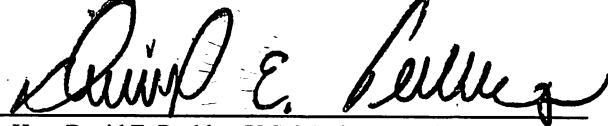
This criminal complaint is based on these facts: SEE ATTACHED AFFIDAVIT

X Continued on the attached sheet.


SA James T. Lyons, Jr.
Federal Bureau of Investigation

Sworn to before me and signed in my presence.

Date: November 17, 2011


Hon. David E. Peebles, U.S. Magistrate Judge

City and state: Syracuse, New York

Hon. David E. Peebles, U.S. Magistrate Judge

AFFIDAVIT IN SUPPORT OF CRIMINAL COMPLAINT

I, James T. Lyons, Jr., being duly sworn do depose and state as follows:

1. I have been employed as a Special Agent of the Federal Bureau of Investigation (FBI) for more than 14 years. I am currently assigned to the Albany Field Division, Binghamton, New York Resident Agency. I am also a member of the Southern Tier Cyber Predator Task Force (STCPTF) which conducts investigations involving the sexual exploitation of minors via computers, cellular telephones, cameras, and the internet. I have investigated matters involving the sexual exploitation of minors and have made arrests and conducted searches pertaining to these types of investigations. While assigned to the FBI office in Binghamton, New York, I have also served as the Affiant in applications for search warrants and requests for interception of electronic and wire communications.

2. This affidavit is made in support of a request for the issuance of an arrest warrant for Wayne Hamilton, date of birth: REDA 1967, of Endwell, New York. Based upon investigation and the facts provided below, your Affiant submits there is probable cause to believe Hamilton committed federal crimes by knowingly receiving Child Pornography and knowingly possessing Child Pornography, in violation of Title 18, United States Code, Sections 2252A(a)(2) and 2252A(a)(5)(B).

3. The statements contained in this affidavit are based in part on information provided by members of the New York State Police (NYSP), and on my experience and background as a Special Agent with the FBI. Since this affidavit is being submitted for the

limited purpose of establishing probable cause to obtain an arrest warrant, I have not included every fact known to me concerning this investigation. I have set forth only the facts I believe are necessary to establish probable cause to believe that Wayne Hamilton violated Title 18, United States Code, Sections 2252A(a)(2) and 2252A(a)(5)(B).

APPLICABLE LAW

4. Title 18, United States Code, Section 2252A entitled "Certain Activities Relating to Material Constituting or Containing Child Pornography", provides that:

I. Title 18, United States Code, Section 2252A(a), states:

Any person who -

(2) knowingly receives or distributes -

(A) any child pornography that has been mailed, or using any means or facility of interstate or foreign commerce or transported in or affecting interstate or foreign commerce by any means, including by computer, or

(B) any material that contains child pornography that has been mailed, or using any means or facility of interstate or foreign commerce shipped or transported in or affecting interstate or foreign commerce by any means, including by computer;

II. Title 18, United States Code, Section 2252A(a)(5)(B), states:

(Any person who -) knowingly possesses, or knowingly accesses with intent to view, any book, magazine, periodical, film, videotape, computer disk, or any other material that contains an image of child pornography that has been mailed, or shipped or transported using any means or facility of interstate commerce or in or affecting interstate or foreign commerce by any means, including by computer, or that was produced using materials that have been mailed, or

shipped or transported in or affecting interstate or foreign commerce by any means, including by computer;

III. Title 18, United States Code, Section 2252A(b)(1), states:

Whoever violates, or attempts or conspires to violate, paragraph (1), (2), (3), (4), or (6) of subsection (a) shall be fined under this title and imprisoned not less than 5 years and not more than 20 years, but if such person has a prior conviction under this chapter, section 1591, chapter 71, chapter 109A, chapter 117, or under section 920 of Title 10 (article 120 of the Uniform Code of Military Justice), or under the laws of any State relating to aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward, or the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography, or sex trafficking of children, such person shall be fined under this title and imprisoned for not less than 15 years nor more than 40 years.

IV. Title 18, United States Code, Section 2252A(b)(2), states:

Whoever violates, or attempts to violate, subsection (a)(5) shall be fined under this title or imprisoned not more than 10 years, or both, but if such person has a prior conviction under this chapter, chapter 71, chapter 109A, or chapter 920 of Title 10 (article 120 of the Uniform Code of Military Justice), or under the laws of any State relating to aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward, or the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography, such person shall be fined under this title and imprisoned for not less than 10 years nor more than 20 years.

FACTUAL BACKGROUND

5. On or about November 2, 2011, members of the NYSP received a complaint that Wayne Hamilton sexually abused a minor child (hereafter "Victim") less than 10 years old. The Victim was interviewed and the Victim confirmed he/she was sexually abused by Hamilton.

6. On or about November 2, 2011, a cooperating witness familiar with Hamilton had a recorded conversation with Hamilton. During this conversation, which was monitored by members of the NYSP, Hamilton admitted, in words or substance, that Hamilton sexually abused the Victim.

7. On or about November 3, 2011, Hamilton was arrested by members of the NYSP and Hamilton was charged with New York state felony sex offenses. Pursuant to Hamilton's arrest, an NYSP investigator conducted a video and audio recorded interview of Hamilton. The NYSP investigator advised Hamilton of his rights and Hamilton waived those rights. Hamilton subsequently made the following admissions, in words or substance:

Hamilton admitted he sexually abused the Victim and stated he has sexual fantasies about 8-14 year old boys and 12-16 year old girls. Hamilton admitted that in addition to the sexual abuse of the Victim, he touched the penises of 4 other minors and fondled the buttocks of 12 additional children. Hamilton further admitted he possessed a computer at his Endwell, New York residence that he used to receive and obtain child pornography from the Internet. Hamilton admitted he possessed over 1,000 images and video clips of child pornography on his home computer as well as a portable hard drive stored at his residence. Hamilton admitted he has been downloading and receiving child pornography via the Internet from his Endwell, New York residence for the past several years. Hamilton also admitted he transferred images of child

pornography from a computer to a number of DVD's which were also stored in Hamilton's residence.

8. On or about November 3, 2011, an NYSP investigator obtained a search warrant for Hamilton's Endwell, New York residence. The search warrant was authorized by the Honorable Joseph F. Cawley, Broome County Court Judge, Binghamton, New York. NYSP members executed the search warrant and seized computer media to include a number of DVD's.

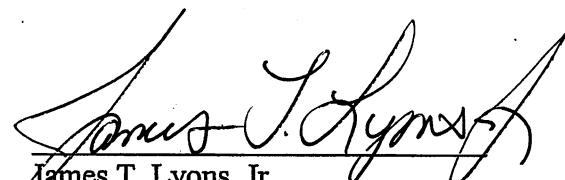
9. On or about November 16, 2011, your Affiant viewed a copy of a DVD that was seized from Hamilton's Endwell, New York residence. The original DVD was hand marked "Feb 28 - 07" making it appear as if the date of February 28, 2007 was written on the DVD. The DVD viewed by your Affiant contained numerous images of naked and partially naked prepubescent children engaged in sexually explicit poses. Many of these images constitute child pornography as they are sexually explicit and consist of close-up images of the genitals of prepubescent children.

10. On or about November 16, 2011, an NYSP investigator reviewed Hamilton's criminal history record. The investigator informed your Affiant that in 1989 Hamilton was convicted in the Town of Owego Court, Owego, New York, for the New York state misdemeanor offense of Endangering the Welfare of a Child. The NYSP investigator and your Affiant are currently unaware of the underlying conduct that resulted in Hamilton's conviction.

CONCLUSION

11. Based upon all of the information set forth in this affidavit, your Affiant respectfully submits there is probable cause to believe that Wayne Hamilton violated Title 18, United States Code, Sections 2252A(a)(2) and 2252A(a)(5)(B), for knowingly receiving and

possessing Child Pornography. Endwell, New York is located within the Northern District of New York. Your Affiant respectfully requests a warrant be issued for Hamilton's arrest for Violation of Title 18, United States Code, Sections 2252A(a)(2) and 2252A(a)(5)(B) .



James T. Lyons, Jr
Special Agent, FBI

SUBSCRIBED TO AND SWORN TO
BEFORE ME THIS 17 th DAY
OF NOVEMBER, 2011



DAVID E. PEEBLES
UNITED STATES MAGISTRATE JUDGE
NORTHERN DISTRICT OF NEW YORK.